

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILD FISH CONSERVANCY, <i>et al.</i> ,	)	No. 3:12-CV-05109-BHS
	)	
Plaintiffs,	)	NOTICE OF ELWHA DEFENDANTS'
v.	)	ONGOING SPRING 2014 RELEASE OF
	)	COHO SALMON
NATIONAL PARK SERVICE, <i>et al.</i> ,	)	
	)	
Defendants,	)	
	)	

This notice is provided to inform the Court of the Elwha Defendants' ongoing release of coho salmon.

The Court entered an order on cross-motions for summary judgment on March 26, 2014, finding that the National Marine Fisheries Service ("NMFS") violated the National Environmental Policy Act ("NEPA") in its environmental assessment ("EA") of the Elwha River hatchery programs. Dkt. 191, pp. 17-21. The Court faulted the EA for its failure to adequately consider an alternative under which less hatchery fish are released into the Elwha River. *Id.*

The Court further stated that it "is concerned with the spring coho and steelhead releases." *Id.* at 25. The Court thus "direct[ed] the parties to immediately meet and confer

NOTICE OF ELWHA DEFENDANTS'  
ONGOING RELEASE OF COHO SALMON - 1  
No. 3:12-CV-05109-BHS

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN STREET  
SEATTLE, WA 98112  
(206) 860-2883

1 regarding Plaintiffs' proposed release of 50,000 steelhead smolt and 50,000 coho smolt,"  
2 indicating that such a release "would be a good starting point for an agreement." *Id.*

3 Counsel for Plaintiffs contacted counsel for the Federal Defendants and the Elwha  
4 Defendants on March 26, 2014, requesting a conferral as directed by the Court. *See* Exhibit 1.  
5 Counsel for the Elwha Defendants responded on March 27, 2014, indicating that the Elwha  
6 Defendants would not participate in such a conferral. *Id.* Counsel for the Elwha Defendants  
7 further indicated that releases of coho salmon began "earlier this week and are expected to be  
8 complete by the end of the day." *Id.*

9  
10  
11 RESPECTFULLY SUBMITTED this 27th day of March, 2014.

12 By: s/ Brian A. Knutsen

Brian A. Knutsen, WSBA # 38806

13 Richard A. Smith, WSBA # 21788

14 Claire E. Tonry, WSBA # 44497

Elizabeth H. Zultoski, WSBA #

15 Smith & Lowney, PLLC

2317 East John St., Seattle, WA 98112

16 Tel: (206) 860-2883; Fax: (206) 860-4187

17 E-mail: briank@igc.org; rasmithwa@igc.org;

clairet@igc.org; elizabethz@igc.org

18  
19 *Attorneys for Plaintiffs Wild Fish Conservancy,*  
20 *Wild Steelhead Coalition, Federation of Fly Fishers*  
21 *Steelhead Committee, and Wild Salmon Rivers d/b/a*  
22 *Conservation Angler*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the attorneys of record.

s/ Brian A. Knutsen

Brian A. Knutsen, WSBA # 38806

Attorney for Plaintiffs

Smith & Lowney, PLLC

2317 E. John Street, Seattle, WA 98112

Tel: (206) 860-2883; Fax: (206) 860-4187

Email: briank@igc.org

# **EXHIBIT 1**

**From:** [Cory Albright](#)  
**To:** ["Brian Knutsen"](#); ["Howell, Coby \(USAOR\)"](#); ["Mathews, Joseph \(ENRD\)"](#); ["Steve Suagee"](#); [jsteadman@kanjikatzen.com](mailto:jsteadman@kanjikatzen.com)  
**Cc:** ["Elizabeth Zultoski"](#); ["Claire Tonry"](#)  
**Subject:** RE: Wild Fish Conservancy, et. al. v. National Park Service, et al.; W.D. Wash. No. 3:12-CV-05109-BHS  
**Date:** Thursday, March 27, 2014 1:55:40 PM

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Brian –

Your understanding is incorrect. The Court did not direct the dismissed Tribal Defendants, who are no longer parties to this case, to meet and confer. As we indicated, after the parties confer, the Tribe would be available to talk early next week.

With respect to your proposal for a telephonic conference with the Court, that is unnecessary. Based on river conditions, size, and smolting behavior, the native coho releases began earlier this week and are expected to be complete by the end of the day. As you know, Plaintiffs chose not to request injunctive relief from the Ninth Circuit with respect to the coho releases, and the fish were released at the scientifically appropriate time. With respect to native steelhead releases, those are still roughly scheduled for the week of April 14. Plaintiffs already have an emergency motion for injunction pending appeal in the Ninth Circuit with respect to those releases and have asked for a ruling by April 10. In any event, there is ample time for Plaintiffs and Federal Defendants (and the Tribe as amicus curiae), to brief issues of remedy for the EA deficiency in the district court.

Thank you,  
Cory

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**From:** Brian Knutsen [<mailto:briank@igc.org>]  
**Sent:** Thursday, March 27, 2014 11:38 AM  
**To:** 'Cory Albright'; 'Howell, Coby (USAOR)'; 'Mathews, Joseph (ENRD)'; 'Steve Suagee'  
**Cc:** 'Elizabeth Zultoski'; 'Claire Tonry'; 'Brian Knutsen'  
**Subject:** RE: Wild Fish Conservancy, et. al. v. National Park Service, et al.; W.D. Wash. No. 3:12-CV-05109-BHS

Counsel:

I have yet to hear from the Federal Defendants regarding my request for a conferral, but it is my understanding from Mr. Albright's message below that the Hatchery Defendants are refusing to participate in a meet and confer. As you know, the Hatchery Defendants represented during oral argument that the coho releases are to occur tomorrow—March 28. I therefore intend to contact the Court in an effort to arrange a telephonic motion for either today or tomorrow. Plaintiffs will move the Court for a preliminary injunction limiting steelhead and coho releases to 50,000 each or, alternatively, move the Court for a preliminary injunction vacating the HGMP approval documents to the extent that they exempt from take liability releases that exceed those numbers. Please immediately provide me with your availability for such a telephonic motion for today or tomorrow.

I would like to confer with the Federal Defendants if possible before requesting this telephonic motion as directed by the Court. Please immediately provide me with your availability for

such a call.

Thank you, Brian.

Brian A. Knutsen  
Smith & Lowney, PLLC  
917 SW Oak St., Suite 300  
Portland, OR 97205  
Tel: (971) 373-8692; Fax: (206) 860-4187  
Email: [briank@igc.org](mailto:briank@igc.org)  
<http://www.smithandlowney.com>

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**From:** Cory Albright [<mailto:calbright@kanjikatzen.com>]  
**Sent:** Thursday, March 27, 2014 11:20 AM  
**To:** 'Brian Knutsen'; 'Howell, Coby (USAOR)'; 'Mathews, Joseph (ENRD)'; 'Steve Suagee'  
**Cc:** 'Elizabeth Zultoski'; 'Claire Tonry'; [jsteadman@kanjikatzen.com](mailto:jsteadman@kanjikatzen.com)  
**Subject:** RE: Wild Fish Conservancy, et. al. v. National Park Service, et al.; W.D. Wash. No. 3:12-CV-05109-BHS

Counsel –

As you know, the Court clearly stated on March 12, 2014 that the dismissed Tribal Defendants are not parties to this case or subject to the Court's jurisdiction. The Court declined to entertain Plaintiffs' request for injunctive relief against the dismissed Tribal Defendants, and denied Plaintiffs' motion to reconsider the order of dismissal. Plaintiffs appealed, and those issues are now before the Ninth Circuit, including Plaintiffs' emergency motion to enjoin the spring releases.

The Court's order on summary judgment does not in any way revisit the dismissal of the Tribal Defendants or its determination that they are not parties to this case. The Court directed "the parties" to meet and confer regarding remedies in connection with the EA deficiency, and the Court's statement applies only to Plaintiffs and the Federal Defendants.

If following the parties' meet and confer, Plaintiffs and Federal Defendants believe it would be useful to discuss any remedies-related issues with the Tribe (as amicus curiae), we would be available next week after we file our response to Plaintiffs' emergency motion in the Ninth Circuit for injunction pending appeal, which is due Monday.

Thank you,  
Cory

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**From:** Brian Knutsen [<mailto:briank@igc.org>]  
**Sent:** Wednesday, March 26, 2014 5:04 PM  
**To:** 'Howell, Coby (USAOR)'; 'Mathews, Joseph (ENRD)'; 'Cory Albright'; 'Steve Suagee'  
**Cc:** 'Elizabeth Zultoski'; 'Claire Tonry'; 'Brian Knutsen'  
**Subject:** Wild Fish Conservancy, et. al. v. National Park Service, et al.; W.D. Wash. No. 3:12-CV-05109-BHS

Counsel:

I would like to schedule a telephonic conference tomorrow in accordance with the Court's directive to "immediately meet and confer regarding Plaintiffs' proposed release of 50,000 steelhead smolt and 50,000 coho smolt." Dkt. 191, p. 25, ln. 13-14. Please let me know your availability for such a conference call. I am available any time tomorrow.

Thank you, Brian.

Brian A. Knutsen  
Smith & Lowney, PLLC  
917 SW Oak St., Suite 300  
Portland, OR 97205  
Tel: (971) 373-8692; Fax: (206) 860-4187  
Email: [briank@igc.org](mailto:briank@igc.org)  
<http://www.smithandlowney.com>